

HOUSE BILL 121
By Odom

AN ACT to amend Tennessee Code Annotated, Title 29, relative to civil damages for denial of health care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding Sections 2 through 4 of this act as a new chapter, to be appropriately designated.

SECTION 2. As used in this act:

(1) "Treatment decision" means a medical decision by a behavioral health organization (hereinafter referred to as "BHO"), a health maintenance organization (hereinafter referred to as "HMO"), or the medical director of a BHO or HMO regarding the access given to a patient to health care services, procedures, and facilities. "Treatment decision" includes any decision to delay, deny, terminate or otherwise limit a patient's access to a health care service, procedure, or facility, including those resulting from utilization review.

(2) "Treatment policy" means a policy or set of criteria used by a BHO or HMO or the medical director of a BHO or HMO in making treatment decisions to determine whether a specific patient should be given access to a specific health care service, treatment, or facility.

(3) "Utilization review" has the meaning given it in Tennessee Code Annotated, Section 56-6-703(4).

SECTION 3.

(a) A BHO or HMO shall designate a licensed physician to serve as its medical director. The medical director shall be a physician licensed to practice medicine under Tennessee Code Annotated, Section 63-6-201. A medical director is subject to all forms of disciplinary action and penalties specified in Tennessee Code Annotated Title 63, Chapter 6, Part 2. A medical director shall be responsible for all treatment decisions and policies, protocols, quality assurance programs, and utilization review decisions of a BHO or HMO. The treatment decisions and policies, protocols, quality assurance programs, and utilization review decisions shall be based upon the higher of generally accepted standards of health care practice among BHOs or HMOs or generally accepted standards of health care practice in the medical community.

(b) A medical director has the duty to exercise ordinary and reasonable care in being responsible for all treatment decisions and treatment policies of a BHO or HMO and is liable for damages for harm to an enrollee if the damage is proximately caused by the medical director's failure to exercise ordinary and reasonable care.

SECTION 4.

(a) A BHO or HMO has the duty to exercise ordinary and reasonable care when making treatment decisions and applying treatment policies. A BHO or HMO is liable for damages for harm to an enrollee if the damage is proximately caused by its failure to exercise ordinary and reasonable care.

(b) A BHO or HMO is liable for damages for harm to an enrollee proximately caused by a treatment decision made by its employees, agents, contractors or representatives who are acting on behalf of the organization and over whom the

organization has the right to exercise influence or control or has actually exercised influence or control that results in the failure to exercise ordinary care.

(c) Nothing in any law of this state that states that a BHO or HMO is not deemed to be practicing a healing art may be asserted as a defense in any action under this chapter by a BHO or HMO.

SECTION 5. This act shall take effect July 1, 2001, the public welfare requiring it.